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VIA EMAIL ONLY

Alan Mitchell
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Environmental Quality Board
Centennial Office Bldg. – 3rd Floor
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Re: Possible Amendments to Rules Governing Environmental Review of Large Electric Power Generating Plants and High Voltage Transmission Lines, *Minnesota Rules*, Part 4410.7000 to 4410.7500 and Parts 4410.4300, subparts 3 and 6 and 4410.4400, subparts 3 and 6.

Dr. Al:

Please accept the following comments of the Minnesota Transmission Owners regarding the above matter.

In general, the Minnesota Transmission Owners support the proposed amendments. We are hopeful that the new rules will reduce unnecessary delay in certificate of need proceedings through clarification at the outset that the EQB is the responsible governmental unit for purposes of environmental review. We are also pleased that the purpose of the environmental assessment ("EA") in the proposed rules is to, over time, make environmental review more generic from one project to the other, thereby eliminating unnecessary duplication and streamlining the amount of work for everyone involved. Environmental information that is project site or route specific will be addressed under chapter 4400 reviews.

Below we offer a few specific remarks.

1. 4410.7630, subpart 7. Time frame for completion of environmental assessment.

At the EQB's recent meeting on proposed changes to chapter 4410, there was consensus that it made sense to establish a four-month time frame for EQB completion of the EA in the context of the transmission planning report and the language now reflects that. The rationale for

the four-month limitation was based primarily on the fact that the seven month time frame set out in the transmission planning statute (Minn. Stat. § 216B.2425) could be become difficult to manage if more than one certification request was filed at the same time, thus the need for certainty as to when the EA would be prepared in that process. That same logic, however, seems equally applicable to CON applications filed under chapter 7849 (Minn. Stat. § 216B.243). Which is why we would strongly urge the EQB to consider adopting a time limitation on when it would be required to submit the EA to the Commission in chapter 7849 proceedings. After all, the Commission is required to issue its decision in a CON proceeding with six months of the application. Minn. Stat. § 216B.243, subd. 5. It is appropriate that the Commission and all CON parties have a sufficient amount of time to evaluate and respond to the EA before the end of the sixth-month, statutory CON period.

There has been much discussion whether the time limitations actually mean what they say – i.e., if an agency's decision takes longer than is allowed by statute or rule, there are typically good reasons for the delay and, in any event, an applicant is unlikely to seek enforcement of that that time frame by way of writ of mandamus or otherwise. That said, there remains real benefit in writing a reasonable time frame into the rule, rather than leaving it completely open-ended as it presently stands. If nothing else, an established time frame acts to help organize already busy persons' schedules, work responsibilities, and priorities. By establishing a time frame of, for instance, four months under which the EQB is required to prepare an EA in chapter 7849 proceedings, it's safe to reason that it is more likely that the EA will be prepared closer to that four-month period than if no time frame is established at all. As we all know, work tends to get organized around deadlines.

2. 4410.7630, subpart 8. Notification of availability of environmental assessment.

At the end of this section, the EQB proposes posting the EA on its website, "if possible." We suggest that the EQB consider deleting this last contingency, as the EQB is very capable of following through on this task.

3. 4410.7635, subp. 2. Generic impacts of power plants.

As we discussed yesterday, this language is lifted from MPCA rule language. As a drafting matter, item (A) of this subpart should be redrafted so as to state, "particulate matter, including particulate matter under 2.5 microns in length." Item (B) can then be deleted in its entirety.

4. **4410.7660. ENVIRONMENTAL ASSESSMENT TO ACCOMPANY PROJECT**

Subpart 1. PUC Decision. This subpart provides in part that the "[EA] shall be considered by state and local agencies with authority to review and authorize a LEPGP or HVTL."

First, other than the EQB and the PUC, what other "state agencies" possess the authority to approve an LEPGP or HVTL? While another state agency certainly has jurisdiction over certain issues that may be impacted by an LEPGP or HVTL (for which a separate permit is required, e.g., DNR water crossing or appropriation permit), that agency doesn't actually approve the proposed facility. That decision rests exclusively with the PUC (in the case of a CON) and the EQB (in the case of a site or route permit) (unless the site or route is approved by local government). Accordingly, the language should be appropriately clarified.

Second, as a matter of jurisdictional comity, we think that local governments ought to be free to decide for themselves whether they "shall" consider the EA in reviewing or approving an LEPGP or HVTL. It is certainly appropriate that the EA be made available for the local government's use and consideration, and should it be available, it is very likely that it would be considered. But it is inappropriate to require the local government to consider the EA. In many instances it is possible that the local government may conduct its own form of EA or other type of environmental review that makes consideration of the EQB's EA either unnecessary or duplicative to the local government's efforts. By mandating that local governments *shall* consider the EA simply provides greater potential for unintended litigation. We can very easily envision a scenario under which a local government conducted its own thorough environmental review of a project and therefore found it unnecessary to consider the EQB's EA. Because it failed to consider the EA, however, the local government would be subject to legal challenge – despite the fact that the local government accomplished the same thing intended by the EA – review of environmental information generic to all LEPGPs and HVTLs. In addition, mandating that the local government consider the EA would by necessity lead to challenges over the *quality* of that consideration. We do not believe the EQB intended such an outcome and it is unwise to allow it.

Accordingly, we suggest that the subpart be re-written as follows: "The environmental assessment shall be made available for consideration by ~~considered by state and~~ local ~~agencies~~ units of government with authority to review and authorize a LEPGP or HVTL."

Thank you for the opportunity to comment. We look forward to working with the EQB and other interested parties as this rulemaking progresses. Should you have any questions, please do not hesitate to contact me at the above number.

Very truly yours,

LINDQUIST & VENNUM P.L.L.P.

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